

Internal Revenue Service

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Date:
February 09, 2015

Attention:

Legend

Taxpayer =

State =

State Regulation =

Statute =

Plans =

Dear :

This is in reply to the letter from your authorized representatives, dated November 17, 2014, requesting a ruling on behalf of Taxpayer concerning the federal income tax

treatment under section 104(a)(1) of the Internal Revenue Code (the Code) of accidental disability retirement benefits paid to former spouses of State employees pursuant to a domestic relations order.

Taxpayer administers death, disability, and retirement benefits that are provided to eligible State employees by Statute under Plans that are tax-qualified pension plans. Participation in the Plans is limited to employees of State. The Statute provides accidental disability retirement benefits to eligible participants.

Taxpayer has previously received a private letter ruling (PLR) on the tax treatment of accidental disability retirement benefits paid under the Plans to participants who incur a work-related injury or sickness. The PLR concluded that the accidental disability retirement benefits are excludable under section 104(a)(1) to the extent the benefits do not exceed a specified percentage of the participant's average final compensation. The PLR also held that accidental disability retirement benefits paid to a participant's survivor are taxable to the same extent as the benefits paid to the participant. The PLR did not address how former spouses should be taxed with respect to accidental disability retirement benefits received pursuant to a domestic relations order.

State Regulation was recently amended to provide that, pursuant to an eligible domestic relations order, all payments to the alternate payee shall be includable in the taxable income of and taxable to the alternate payee in the same proportion as payments to the participant are includable in the taxable income of and taxable to the participant. Taxpayer has not implemented this change pending the issuance of this PLR.

Section 104(a)(1) of the Code and section 1.104-1(b) of the Income Tax Regulations exclude from gross income amounts that are received by an employee under a workmen's compensation act or under a statute in the nature of a workmen's compensation act that provides compensation to employees for personal injuries or sickness incurred in the course of employment. Section 1.104-1(b) of the regulations also provides that the exclusion from income of amounts described in section 104(a)(1) applies to compensation which is paid under a workmen's compensation act to the survivor or survivors of a deceased employee. The exclusion from income of amounts described in section 104(a)(1) does not apply to a retirement pension or annuity to the extent that it is determined by reference to the employee's age or length of service, or

the employee's prior contributions, even though the employee's retirement is occasioned by an occupational injury or sickness.

Section 104(a)(1) is strictly construed to conform to the general purview of section 61 that all income is taxable unless explicitly excluded. The accidental disability retirement benefits are specifically paid to State employees for their work-related injury or sickness, and not the work-related injury or sickness of the former spouses. Moreover, section 1.104-1 of the regulations explicitly limits the exclusion from income to employees and their survivors. Neither the Code nor the regulations provide an exclusion from income for amounts paid to former spouses pursuant to a domestic relations order. See, Fernandez v. Commissioner, 138 T.C. 378 (2012).

Accordingly, based on the information submitted and representations made, and authorities cited above, we conclude that accidental disability retirement benefits paid under the Plans to former spouses of State employees pursuant to eligible domestic relations orders are not excludable under section 104(a)(1) of the Code from the taxable income of the former spouses. The entire amount paid to the former spouses is includible in taxable income.

This ruling applies to accidental disability retirement benefits paid to former spouses for tax years beginning after December 31, 20 .

No opinion is expressed or implied concerning the federal tax consequences under any other provision of the Code or regulations other than those specifically stated above.

This ruling is directed only to the Taxpayer who requested it. Section 6110(k) of the Code provides that it may not be used or cited as precedent.

Sincerely,

/S/

Harry Beker
Chief, Health & Welfare Branch
Office of Associate Chief Counsel
(Tax Exempt and Government Entities)